

California Department of Corrections and Rehabilitation (CDCR)
California Correctional Health Care Services (CCHCS) Headquarters
8260 Longleaf Drive, Bldg. C, Ste. 613
Elk Grove, CA 95758

April 1, 2014

Universal Service Administrative Company (USAC)
Rural Health Care Division
Healthcare Connect Fund Program
Attention: **LETTER OF APPEAL**
2000 L Street, NW, Suite 200
Washington, DC 20036



Re: **USAC DECISION – NON-RURAL HCP(S) DENIED**
HCP Name: California Medical Facility and California State Prison – Solano
HCP Number: 35981 and 35982
Contact: Tammy Sullivan-King, Subject Matter Expert
Phone/Email: (916) 691-6575 or Tammy.Sullivan-King@cdcr.ca.gov

This Letter of Appeal is in response to an email Letter of Denial sent by the USAC dated Tuesday, April 1, 2014 regarding California Correctional Health Care Services (CCHCS) Health Care Providers (HCPs) located in urban census tract codes state-wide.

Reason for Denial:

RHCD determined that the referenced HCPs (above) are non-rural and are not eligible to participate in the HCF because they are not Eligible Entities per 47 C.F.R. Section 54.600(a).

The CCHCS USAC review representative is Kitea Lewis. The denial is based on these entities being located in urban census tract codes. For that reason, HCPs 35981 and 35982 cannot qualify as rural health clinics and are denied.

The denial stated that an HCP must meet two (2) criteria in order to be eligible to participate in the Healthcare Connect Fund:

1. The HCP must be a public or non-profit health care provider (see 47 C.F.R. § 54.601(a)).



2. The HCP must qualify as one of the following eligible entities as defined (see 47 C.F.R. § 54.600(a)):
 - Post-secondary educational institution offering health care instruction, teaching hospital, or medical school
 - Community health center or health center providing health care to migrants
 - Local health department or agency
 - Community mental health center
 - Not-for-profit hospital
 - Rural health clinic including mobile clinic
 - Dedicated emergency room of a for-profit hospital
 - Part-time eligible entity located in otherwise ineligible facility
 - *Consortia of one or more of the above entities.*¹



An HCP that does not meet these two (2) criteria is not eligible to participate in the RHC Healthcare Connect Fund program. Based on the information provided on the submitted FCC Form 460, RHCD has determined that the HCPs referenced above are not eligible to participate because the HCPs have been identified as:

- ☐ A for-profit HCP
☒ An ineligible HCP type

Reason for Appeal:

The CDCR CCHCS believes that the above referenced HCPs meet the eligibility criterion as follows:

1. Based on the Federal Communications Commission (FCC) Rules and Guidelines stated within FCC Order 12-150, WC Docket 02-60 dated December 12, 2012 paragraphs 51, 56, 59, 61 and 62 as stated.
2. Denial of non-rural HCPs is based on USAC interpretation of the FCC's HCF Order (referenced above in #1).²
3. The Healthcare Connect Fund was created based on the Pilot Program which provided support to both rural and non-rural HCPs under section 254(h)(2)(A), which directs the Commission to "enhance... access to

¹ This item is left off of the list of eligible entities provided by USAC on the Denial Letter; however is present in the defined legislation (See 47 C.F.R. § 54.600(a)).

² Ref: Lukas, Nace, Gutierrez & Sachs, LLP, Notice of *Ex Parte* in WC Docket No. 02-60, *Request for Review of a Decision of the Universal Service Administrator, California Telehealth Network*, dated February 4, 2014, (See also 47 C.F.R. §54.702(c) ("[USAC] may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress.)).

advanced telecommunications and information services for *all* public and non-profit . . . health care providers”.

Supporting Evidence:

In the FCC Order 12-150, WC Docket 02-60, it states that non-rural HCPs may apply and receive support as part of consortia as long as the consortia is comprised of over fifty percent (50%) rural HCPs.³ The Order also states that there will be additional limitations imposed to ensure that support provided for non-rural HCPs does not impose on the original intent of the RHCP which was to serve rural smaller communities. Those limitations were specifically stated as “*three simple limitations that should help ensure a fiscally responsible reformed health care program without unduly restricting non-rural participation*”⁴ Of those three (3) limitations, none stated that a non-rural HCP must be one (1) of the Eligible Entity types as defined in Section 254(h)(7)(B).

For purposes of the majority rural requirement, the FCC “grandfathered” non-rural HCP sites into the HCF that met the old *de minimus* standard but that would not meet the new majority rural standard. The only requirement being that the HCP had received a funding commitment through a Pilot project that had fifty percent (50%) or more non-rural HCP sites with funding commitments as of the adoption date of the Order. In this instance, the FCC stated that the project may add new non-rural HCP sites **only if** the new sites maintain the majority rural requirement.⁵ There is no mention of the non-rural HCPs meeting one (1) of the Eligible Entity categories as defined in Section 254(h)(7)(B) and there was no conceivable notice from either USAC or the FCC that a change in policy was imminent.

In communications with the USAC regarding the non-rural HCP determination, the following statement was made as a basis for the denial:

“I [USAC] believe the rural entities that CDCR has previously received funding for are eligible as “rural health clinic”. The urban entities cannot be considered eligible as a “rural health clinic” because they are urban and not rural, thus they cannot be a “rural” health clinic.”

³ FCC Order 12-150, WC Docket 02-60, Paragraph 51 In section IV.B.2, we conclude that non-rural HCPs may apply and receive support as part of consortia in the Healthcare Connect Fund. To ensure that program support continues to benefit rural as well as non-rural HCPs, however, we require that in each consortium, a majority of HCP sites (over 50 percent) be rural HCPs.

⁴ FCC Order 12-150, WC Docket 02-60, Paragraph 61, “First, non-rural HCPs may only apply for support as part of consortia that include rural HCPs; Second, non-rural HCPs may receive support only if they participate in consortia that include a majority (more than 50 percent) of sites that are rural HCPs. Third, we establish a cap on the annual funding available to each of the largest hospitals participating in the program (those with 400 or more beds)”.

⁵ FCC Order 12-150, WC Docket 02-60, Paragraph 62.

Non-Rural participants in the Pilot Projects were comprised of various types of entities where the term “clinic” was used generically and functionally, to designate a health care location in which clinical care was provided. This functional use of the term “clinic” was in keeping with earlier precedent in which the FCC held that “dedicated emergency departments in *for profit* rural hospitals constitute [eligible] ‘rural health clinics.’”⁶ Of relevance here is the fact that the USAC and the FCC have long recognized as eligible HCP clinics that were not, strictly speaking, “rural health clinics”. The CDCR CCHCS contends that, although located in an urban location, these clinics are in fact “clinics” providing comprehensive primary care services to the inmate population and that they meet the single requirement stated in the *FCC Order* of being participants in a consortium with a fifty-one percent (51%) rural majority.

Nowhere in the *FCC Order* is there verbiage that addresses the issue of certain non-rural HCPs - that were eligible under the Pilot Program - no longer being eligible under the HCF, or a suggestion that the definition of what constituted a “rural health clinic” was changing.

Requested Outcome:

The CDCR CCHCS requests that the USAC reverse their decision and accept the above referenced HCPs into the Healthcare Connect Fund as eligible health care providers (HCPs) participating in a consortium consistent with the previous practices implemented under the Rural Health Care Pilot Program (RHCPP).

Sincerely,



Tammy Sullivan-King
Subject Matter Expert
Task Consulting, Inc.



Sherri Bridges
Project Coordinator
CDCR CCHCS Consortium

⁶ See *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 18 FCC Rcd 24546, 24553-55, Paragraph 14 (emphasis added) (2003) (*2003 Report and Order*); see also *id.* Paragraphs 13-16.

**Rural Health Care (RHC) Universal Service
Eligibility and Registration Form**

Read instructions thoroughly before completing this form. Failure to comply may cause delayed or denied funding.

Block 1: General Information

1 Date Submitted: 03/04/2014

2 Applying to: ☒ Determine eligibility of an HCP site ☐ Register an ineligible site
☐ Determine eligibility of Consortium ☐ Register an off-site administrative office
☐ Register an off-site data center

2a If applying as an off-site data center, list all sites (eligible and ineligible) that will use the services of this data center.

2b If applying as an off-site administrative office, list all sites (eligible and ineligible) that will use the services of this administrative office.

Block 2: Site Information – Physical Site

Enter the actual physical location of the site.

3 HCP Number 35981 4 Site Name California Medical Facility

5 Name of Legal Entity California Medical Facility

6 Enter FCC Registration Number (FCC RN) for Line 5 legal entity: 0020046264

6a If the Line 5 legal entity does not have an FCC RN and only plans to participate as a consortium member, applicant may enter FCC RN for the Consortium (see instructions for more detail):

7 Site Contact Name Kevin Sutton

8 Address Line 1 1600 California Drive

9 Address Line 2 10 County Solano

11 Geo Location (if no street address)

12 City Vacaville 13 State CA 14 Zip Code 95696

15 Phone (916) 691-2339 Ext. 16 Email Kevin.Sutton@cdcr.ca.gov

Block 3: Consortium Information

17 HCP Number

18 Name of Consortium

19 Is the Consortium a legal entity? ☐ Yes ☐ No If yes, Consortium FCC RN:20 Consortium has a written agreement allocating legal and financial responsibility. ☐ Yes ☐ No

If yes, submit the agreement to USAC. If no, see instructions regarding the default entity that bears legal and financial responsibility for the consortium's activities in connection with the Healthcare Connect Fund.

21 Consortium Leader Type:

- ☐ The Consortium ☐ Ineligible State organization
☐ An eligible HCP participating in the Consortium ☐ Ineligible public sector (government) entity
☐ Ineligible non-profit entity
HCP Number: _____

A state organization, public sector entity, or non-profit entity may obtain an exemption to allow the organization to perform vendor functions and provide application assistance. Submit any such request for exemption.

22 Consortium Leader Contact Information 23 Name of Consortium Leader

Consortium applicants are required to have a Letter of Agency from each eligible HCP that authorizes the Consortium to file forms on the HCP's behalf. Submit a Letter of Agency for each eligible HCP.

24 List participating sites by HCP Number (eligible/ineligible)

Block 4: Contact Information

25 Primary Account Holder/Project Coordinator Name Sherri Bridges

26 Employer CDCR California Correctional Health Care Services

27 Address Line 1 8260 Longleaf Drive ☐ Same as Physical Location

28 Address Line 2 Bldg. C3-616

29 City Elk Grove 30 State CA 31 Zip Code 95758

32 Phone # (916) 691-3531 Ext. 33 Email Sherri.Bridges@cdcr.ca.gov

34 Secondary Account Holder (Application Contact/Assistant Project Coordinator) Rosie Williams		
35 Employer CDCR California Correctional Health Care Services		
36 Address Line 1 8260 Longleaf Drive		<input checked="" type="checkbox"/> Same as Primary Account Holder Address
37 Address Line 2 Bldg. C3-616		
38 City Elk Grove	39 State	40 Zip Code 95758
41 Phone # (916) 691-3100 Ext.	42 Email Rosie.Williams@cdcr.ca.gov	
Block 5: Eligibility Category		
43 Select the category that describes the HCP site (If seeking an eligibility determination for a Consortium, "Consortium of the above" will be automatically selected)		
<input type="radio"/> A. Community health center or health center providing health care to migrants		
<input type="radio"/> B. Community mental health center		
<input type="radio"/> C. Local health department/agency		
<input type="radio"/> D. Non-profit hospital		
<input type="radio"/> E. Part-time eligible entity located in an ineligible facility		
<input type="radio"/> F. Post-secondary educational Institution offering health care instruction, teaching hospital, or medical school		
<input checked="" type="radio"/> G1. Rural health clinic		
G2. Is this a mobile rural health care provider? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
<input type="radio"/> H. Dedicated ER of rural, for-profit hospital		
<input type="radio"/> I. Consortium of the above		
44 Provide a brief explanation of why this site qualifies as the organization type selected above: CDCR CCHCS owns and operates 35 health clinics state-wide. 19 are rural health clinics and have participated in the Telecommunications Program since Sept. 2010. This site is an urban location within a consortium that meets the 51% majority rural req.		
Block 6: Additional Information		
45 Non-Profit Tax ID (EIN): 870746811		
46 National Provider Identifier: 1396169405	47a Organization Taxonomy Code: 261QP2400X	
Explanation if necessary (see instructions)	47b Site Taxonomy Code: 261QP2400X	
	Explanation if necessary (see instructions)	
48 If a Non-Profit Hospital, is this a Critical Access Hospital? <input type="checkbox"/> Yes <input type="checkbox"/> No		
49 If a Non-Profit Hospital, how many licensed patient beds are at the site? _____		
50 Is the site location: <input type="checkbox"/> On Tribal lands <input type="checkbox"/> Otherwise affiliated with a Tribe		
<input type="checkbox"/> Operated by the Indian Health Service <input checked="" type="checkbox"/> N/A		
51 [Reserved]	52 [Reserved]	
Block 7: Certifications and Signatures		
53 <input checked="" type="checkbox"/> I certify that I am authorized to submit this request on behalf of the site or consortium.		
54 <input checked="" type="checkbox"/> I declare under penalty of perjury that I have examined this form and attachments and to the best of my knowledge, information, and belief, all information contained in this form and in any attachments is true and correct.		
55 <input checked="" type="checkbox"/> If applying as an individual health care provider site, I certify that the health care provider is a non-profit or public entity and that the site is located in a FCC designated rural area, or is grandfathered rural pursuant to 47 C.F.R. Sec. 54.600(b)(2).		
56 <input type="checkbox"/> If applying as a consortium, I certify that the eligible health care providers participating in the consortium are non-profit or public entities.		
57 <input checked="" type="checkbox"/> I understand that all documentation associated with this form must be retained for a period of at least five years pursuant to 47 C.F.R. § 54.648, or as otherwise prescribed by the Commission's rules.		
58 <input type="checkbox"/> If applying as a consortium, I understand I must obtain letters of agency from each consortium member that grants me the authority to complete, sign, and submit all forms for the funding year(s) for which support is sought.		

59 Signature	60 Date 03/04/2014
61 Printed Name of Authorized Person Tammy Sullivan-King	
62 Title/Position of Authorized Person Subject Matter Expert	
63 Phone (916) 691-6575 Ext.	64 Email Tammy.Sullivan-King@cdcr.ca.gov
65 Employer Task Consulting, Inc.	66 Employer's FCC RN 0019191253

Persons willfully making false statements on this form can be punished by fine or forfeiture under the Communications Act, 47 U.S.C. Secs. 502, 503(b), or fine or imprisonment under Title 18 of the United States Code, 18 U.S.C. Sec. 1001.

FCC NOTICE FOR INDIVIDUALS REQUIRED BY THE PRIVACY ACT AND THE PAPERWORK REDUCTION ACT

Part 3 of the Commission's Rules authorize the FCC to request the information on this form. The purpose of the information is to determine your eligibility for certification as a health care provider. The information will be used by the Universal Service Administrative Company and/or the staff of the Federal Communications Commission, to evaluate this form, to provide information for enforcement and rulemaking proceedings and to maintain a current inventory of applicants, health care providers, billed entities, and service providers. No authorization can be granted unless all information requested is provided. Failure to provide all requested information will delay the processing of the application or result in the application being returned without action. Information requested by this form will be available for public inspection. Your response is required to obtain the requested authorization.

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Third Party Authorization Upload:
Third Party Authorization Effective Start Date:
Third Party Authorization Effective End Date:

Block 4: Contact Information

34 Secondary Account Holder (Application Contact/Assistant Project Coordinator)		
35 Employer		
36 Address Line 1		<input type="radio"/> Same as Primary Account Holder Address
37 Address Line 2		
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Enter the actual physical location of the site.

3 HCP Number 35982 4 Site Name California State Prison - Solano

5 Name of Legal Entity California State Prison - Solano

6 Enter FCC Registration Number (FCC RN) for Line 5 legal entity: 0020046264

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